United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

ORIGINAL

76-1504

United States Court of Appeals
For the Second Circuit

B/1s

UNITED STATES OF AMERICA,

Appellee,

v.

WILLIAM R. BALOG, ET. AL.,

Appellants.

On Appeal From The United States District Court
For The District Of Connecticut

BRIEF FOR APPELLANTS
WILLIAM R. BALOG, ET AL.

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ISSUES

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b. the affidavit in support of the application did not adequately set forth why alternative methods other than electronic surveillance could not be employed?

2. Did the District Court err when it impliedly held that, in the absence of a hearing, the Attorney General himself authorized the surveillance application despite the fact that the affidavit by the Acting Assistant Attorney General and the attorney presenting the application to the Court both indicated that it was the Acting Assistant Attorney General who authorized said application?

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5. Did the District Court err in failing to dismiss the indictments when the Government, after filing its Notice of Readiness, in no way ever indicated that it was prepared to go to trial, and, in fact, made a subsequent application for voice exemplars of all the appellants?

6. Did the District Court err in refusing to hold a hearing on whether or not the Government was in fact ready to prosecute as of the time it filed its Notice of Readiness when said Notice was filed 173 days after the initial arrest of the appellants and prior to a subsequent motion to compel voice exemplars?

7. Did the District Court err in failing to suppress articles seized from the person and or premises occupied by the appellants when the command of the search warrant allowing said search was:

a. overly broad and, in fact, of a generally exploratory nature leaving the ultimate discretion to the officers as to what items should be seized.

b. the affidavit in support of the application for the warrant contained patent misleading and inconsistent statements;

c. the reliability of the informant who served as a basis for affiant's application had not been adequately established?

8. Did the District Court err in failing to hold a hearing on the issues raised above?

§ 2518. Procedure for interception of wire or oral communications

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(10) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

§ 2516. Authorization for interception of wire or oral communications

(1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as

which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), or chapter 102 (relating to riots);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 224 (bribery in sporting contests), section 1084 (transmission of wagering information), section 1503 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1751 (Presidential assassinations, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), or sections 2314 and 2315 (interstate transportation of stolen property);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving bankruptcy fraud or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title; or

(g) any conspiracy to commit any of the foregoing offenses.

SECOND CIRCUIT RULES

REGARDING

PROMPT DISPOSITION OF CRIMINAL CASES

4. In all cases the government must be ready for trial within six months from the date of the arrest, service of summons, detention, or the filing of a complaint or of a formal charge upon which the defendant is to be tried (other than a sealed indictment), whichever is earliest. If the government is not ready for trial within such time, or within the periods as extended by the district court for good cause under rule 5, and if the defendant is charged only with non-capital offenses, then, upon application of the defendant or upon motion of the district court, after opportunity for argument, the charge shall be dismissed.

5. In computing the time within which the government should be ready for trial under rules 3 and 4, the following periods should be excluded:

(a) The period of delay while proceedings concerning the defendant are pending, including but not limited to proceedings for the determination of competency and the period during which he is incompetent to stand trial, pretrial motions, interlocutory appeals, trial of other charges, and the period during which such matters are sub judice.

(b) The period of delay resulting from a continuance granted by the district court at the request of, or with the consent of, the defendant or his counsel. The district court shall grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges. A defendant without counsel should not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent.

PRELIMINARY STATEMENT

NICHOLAS LANESE, RICHARD LANESE and WILLIAM BALOG entered nolo contendere pleas on September 13,1976, in the United States District Court for the District of Connecticut. The appellants were convicted on one count of a violation of Section 1955 of Title 18, United States Code, in that they did unlawfully and knowingly conduct an illegal gambling business in violation of the laws of Connecticut, Public Act 65, Sections 23 and 24, involving more than five persons and having a gross revenue of Two Thousand ($2,000.00) Dollars on any single day (1, 2, 602-626)*.

At the time that the Alford plea was entered into, appellants'counsel reserved their right to appeal on numerous issues raised in pretrial motions, all of which were denied by the trial court. (606-608) It is the trial court's denial of these preliminary motions that form the basis of the within appeal.

The appellants were sentenced as follows:

*The numbers in parentheses refer to the page listed in the appendices.

NICHOLAS LANESE: Imprisonment for two years with sentence suspended after service of three months and a period of probation for two years. In addition Nicholas Lanese was fined the sum of $7,500.00 to be paid within one year. (645)

RICHARD LANESE: Imprisonment for a period of two years with sentence suspended forthwith. Richard Lanese was placed on probation for a two year period and fined $3,000.00 to be paid within one year. (636)

WILLIAM BALOG: Imprisonment for a period of two years with sentence suspended after a period of three months and a period of probation for two years. In addition, William Balog was fined the sum of $5,000.00 to be paid within one year. (633)

Pursuant to Judge Zampano's direction, execution of the above sentences was stayed pending appeal of the above convictions. (645)

STATEMENT OF FACTS

On June 29, 1972, appellants RICHARD LANESE, NICHOLAS LANESE and WILLIAM BALOG were arrested and charged pursuant to 18 USC 1955 and 2 for having allegedly taken part in an illegal gambling business, (bookmaking) with such business being in violation of Connecticut Public Act No.65, Sections 23 and 24(b), which business involved more than five persons and which business had a gross revenue of $2,000.00 on any single day. (1-2)

A plea of not guilty was entered by all the appellants on July 24, 1972. A number of pretrial motions were filed by all the appellants, some of which are the subject of the within appeal. They include the following:

1. - A motion to suppress any and all of the intercepted wire and oral communications. (325)
2. - A motion to suppress any and all of the items which were seized from the person of each of the appellants and from certain listed premises. (422, 427, 433)
3. - A motion to dismiss the indictment on the grounds that the appellants were denied a speedy trial. (259)

All of the appellants were placed under electronic surveillance by order of Judge Blumenfeld of the District Court for the District of Connecticut on September 16,1971. (196) The application to the court for the wire interceptions on certain designated telephones recited that the "Honorable John N.Mitchell has specifically designated in this proceeding the Acting Assistant Attorney General of the Criminal Division of the United States Department of Justice, the Honorable Henry E. Petersen, to authorize affiant to make this application for an order authorizing interception of wire communications". (199) A letter of authorization from Petersen to John R. Tarrant, Special Attorney of the United States Department of Justice was attached to the application. (205) The underlying facts which supported Judge Blumenfeld's order were supplied by an affidavit by Daniel F. Steinke, Special Agent of the Federal Bureau of Investigation. (211-222) In addition, on December 30, 1971, United States Magistrate Dion W. Moore, also upon application of Special Agent Daniel F. Steinke, issued search warrants for a number of premises in the Bridgeport-Milford area. (188) These premises included Richard Lanese's home at 177 Walnut Street, Milford, Connecticut, and William Balog's apartment at 3880 Main Street, Bridgeport, Apartment 46. A warrant was

also issued for the person of Nicholas V. Lanese, the third appellant.

On or about January 1,1972, members of the Federal Bureau of Investigation, accompanied by local police officers, conducted a search and seizure of the various premises listed above as well as the person of Nicholas V. Lanese. Numerous items were seized. (414)

The indictment in the within case were returned on June 27,1972. On June 8,1973, the District Court granted the government's motion for stay of the proceedings which was also duly entered into by all of the counsel for the appellants. (250-251) All the interested parties were concerned with the disposition of U.S. v. Giordano, 416 U.S. 506, 94 S.Ct. 1820. The stay of the proceedings was to be terminated upon the filing of that decision. The Supreme Court decided Giordano together with its decision in U.S. v. Chavez, 416 U.S. 562, 94 S.Ct.1849 on May 13,1974. On May 28,1974, the government filed a notice of readiness indicating that the cases were ready to proceed.(252) However, on October 18, 1974, the government again notified the District Court that the cases were ready to proceed. (263) By motion dated July 10,1975, all of the appellants moved to dismiss the indictment on the grounds that they had been denied a speedy trial. (259)

Thus, Judge Zampano denied the appellants' motion to dismiss the indictment on March 15, 1975; to suppress the intercepted oral communications on June 1,1976,(544) and to suppress the items seized as a result of the physical search and seizure based upon the search warrant on July 19,1976 (587). The appellants preserved all the above issues for review by this Court when they entered their nolo contendere pleas. (606-608)

POINT I

THE DISTRICT COURT ERRED WHEN IT DENIED SUPPRESSION OF ANY AND ALL THE WIRE AND ORAL COMMUNICATIONS SINCE (A) THE ORDER OF AUTHORIZATION UNDER WHICH THESE COMMUNICATIONS WERE INTERCEPTED WAS INSUFFICIENT ON ITS FACE; (B) THE INTERCEPTION APPLICATION DID NOT ADEQUATELY SHOW THAT TRADITIONAL INVESTIGATIVE TECHNIQUES WERE NOT SUFFICIENT.

(A) It is appellants' view that all the oral communications were unlawfully intercepted, since the authorizing official was merely an Acting Assistant Attorney General who did not possess the requisite authority to issue such authorization. Accordingly, the appellants' application made pursuant to 18 U.S.C. 2518(10)(a)(ii) and 18 U.S.C.2515 should have been granted.

Henry M. Petersen was appointed Acting Assistant Attorney General in charge of the Criminal Division, U.S. Department of Justice, in a recess appointment on January 11,1972. However, Mr.Petersen's nomination was not confirmed by the Senate until February 3,1972. Prior thereto on October 15,1971, Mr.Will Wilson had been serving in that capacity, However, Petersen was Acting Assistant Attorney General from October 15,1971, until his confirmation by the Senate. At the time of the application to Judge Blumenfeld,

Petersen was still only an Acting Assistant Attorney General.

Special Attorney John R.Tarrant of the United States Department of Justice submitted an application to the District Court for wiretap interceptions on certain telephones. As noted previously, the application recited that "John N. Mitchell has specifically designated in this proceeding, the Acting Assistant Attorney General ... Henry E. Petersen, to authorize affiant to make this application for an order authorizing the interception of wire communications."(199; see also 208) Attached to Tarrant's application was a letter from Petersen which authorized Mr. Tarrant to make application to the court. (205) Both the order of the court and the application indicated that the authority to make the application was given by the "Acting Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Henry E. Petersen, who was specifically designated in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code ..."(197) In co-appellant Spinelli's motion for pre-trial discovery the government was asked to identify all persons who authorized the interceptions. The government's response was that "the government takes the

position that the order and underlying applications speak for themselves". (747) Therefore, by the government's own interpretation it is manifest that Petersen, an Acting Assistant Attorney General, was specifically designated by Mitchell.

Under the express terms of the statute the Attorney General may specifically designate only an Assistant Attorney General to authorize an application seeking a wiretap interception order. [18 U.S.C.2516(1)] Under the explicit language of the statute an Acting Assistant Attorney General is not one who may be specifically designated to authorize wiretap applications. Any application which asserts that the authorizing officer was an Acting Assistant Attorney General makes it facially incomplete. It is obvious that Petersen was not one of those specifically designated individuals who had the authority to authorize wiretap applications. Whether or not this is a de minimus transgression has been the subject of numerous cases at the federal bar. Those individuals who are specifically designated to authorize such wiretap applications must be subject to the system of checks and balances under which such individuals are first nominated by the President and then confirmed by the Senate. As noted by

the Fifth Circuit Court of Appeals in U.S. v. Robinson, 468 F.2d 189 (1972):

> "This provision centralizes in a publicly responsible official subject to the political process the formulation of law enforcement policy on the use of electronic surveillance techniques".

The United States Supreme Court in Giordano, supra, 1820, held that the statute was intended to limit the power to authorize wiretap applications to the Attorney General himself and to any Assistant Attorney General he might designate. The Giordano Court looked to the legislative history of the statute:

> "Section 2516 of the New Chapter authorizes the interception of wire or oral communications under court order pursuant to the authorization of the appropriate Federal, State or local prosecuting officer. (Paragraph 1)...centralizes in a publicly responsible official subject to the political process a formulation of law enforcement policy on the use of electronic surveillance techniques. Centralization will avoid the possibility that diversion practices might develop." (see U.S. v. Giordano, supra, 1825; see also S.Rep. No.1097 Cong., 2nd Sess. 96-107.)

The Giordano Court noted further that the Congressional report was significant since it recognized that the authority to apply for court orders was to be narrowly confined and is to be limited to those responsible to the political process. (See U.S. v. Giordano, supra, 1829.)

While Giordano specifically held that the executive assistant of the Attorney General was not included within the category of those who are responsive to the political process, it is averred here, as it was in the District Court, that an Acting Assistant Attorney General is virtually in that same class of individuals. The Acting Assistant Attorney General has not been nominated by the President nor confirmed by the Senate. As such, the Acting Assistant fails to satisfy that requirement clearly mandated by the statute and now recognized by the Supreme Court as one who has the requisite authority to authorize wiretap applications. It is especially significant that under the original proposed language the statute empowered both an Acting Assistant Attorney General and an executive assistant to the Attorney General to authorize applications to intercept orders. The predecessor bill did specifically authorize those individuals. However, in its final form the statute did not include those individuals. In excluding these individuals, the Senate expressed its desire to limit narrowly to only those responsible to the political process the named officials possessing the requisite authority to authorize wiretaps. (See Senate Report No.1097.) Moreover, as the Court noted in Giordano, the congressional intent was simply that the authorization in U.S.C.2516 was to occur

before the application was presented to a federal judge and not any time thereafter. Obviously, the statute would be greatly attenuated if the screening process were to occur after the application is made. (See U.S. v. Giordano, supra, 1830, N.2)*

Similarly, in U.S. v. Chavez, supra, decided by the Supreme Court on the same day as U.S. v. Giordano, the Court reaffirmed its construction of 2516(1) by noting that, "political responsiveness" is achieved by presidential appointment and Senate confirmation. (See 416 U.S. 520, N.9.) The Court went on to note as follows:

> "In Giordano, improper authorization by the Attorney General's executive assistant rendered the interception unlawful and subject to suppression under Section 2518(10)(a),(i) ... Congress sought to restrict the use of electronic surveillance by restricting the power to authorize wiretaps to a small group of senior Justice Department officials. Violations of a significant provision, therefore, was sufficient to warrant suppression".

The Third Circuit, in U.S. v. Acon, 513 F.2d 513, while holding, on its facts, that the Attorney General himself authorized the wiretap application, still underscored the necessity for strict interpretation of the statute:

> "In the present case the government argues that an Acting Assistant Attorney General is not the same as the Attorney General's executive assistant.

*For a review of the significance of the Senate's right to review appointments see Williams v. Philips, 360 F.Supp.1367, DC 1973)

> Although for other purposes this may be true, we cannot agree in this context. Congress has created a very narrow and specific authorization power. An Acting Assistant Attorney General is not mentioned in the statute. Neither does an Acting Assistant Attorney General meet the Supreme Court's test of political responsiveness. As such, the Acting Assistant Attorney General who has not been appointed by the President and confirmed by the Senate may not be designated specifically to authorize wiretaps under Section 2516(1)". (See U.S. v. Acon, supra 1975; see also U.S. v. Norducci, 341 F.Supp.1107, aff'd. 500 F.2d 1401, Third Cir., 1974.)

Other Circuit Court decisions have interpreted the authorization requirement strictly. In U.S. v. Calallero, 503 F.2d 1018 (1974), the Sixth Circuit held that despite the fact that the authorization was approved by the Attorney General the surveillance order was suppressed because it was finally approved by the Attorney General's executive assistant. (See U.S. v. Montello, 478 F.2d 671, cert.den.417 U.S.920; U.S. v.Sklaroff, 500 F.2d 1183.)

In U.S. v. Focarile, 340 F.Supp.1033, aff'd.469 F.2d 522, aff'd.473 F.2d 906, cert.den.411 U.S.952, the Attorney General had properly authorized the application, but both the applications for the wiretap and order of the issuing judge stated that an assistant attorney general specifically designated for the purpose by the Attorney General had been the one to authorize the submission of the application to

the court. The District Court in Maryland held, and the Circuit Court affirmed, that the contents of the interceptions must be suppressed. This is precisely the situation at bar, (if we assume that the former Attorney General's affidavit is binding - 207). The application submitted to Judge Blumenfeld states otherwise (196-204) as does the letter from Petersen himself.(205) This Court has never wrestled with this specific issue. The Southern District has held that when the Attorney General has, at most, approved an Assistant Attorney General as one "specially designated" but did not authorize the application for the wiretap, the order would be suppressed. (See U.S. v. Brown, 351 F.Supp.38,1972.) For other District Court holdings to the effect that despite the initial authorization by the Attorney General, the applications themselves were defective on their face, see U.S.v. Laff, 365 F.Supp. 737 D.C.Fla.,1973; U.S. v. Robinson, 359 F.Supp.52,D.C.Fla., 1973; U.S. v. Consiglio,* 391 F.Supp.564 D.C.Conn.,1974. Moreover, the decisions in Giordano and Chavez did not consider the legal issue now presented to this Court. In Chavez it was established that once the Attorney General in fact

*In Consiglio, the government originally requested that an Assistant Attorney General had authorized the wiretap application. It later asserted that the Attorney General himself did. See U.S. v. Consiglio, 342 F.Supp. 556.

authorizes the wiretap application, suppression should not be ordered when the application and order itself incorrectly identified the authorizing official as an Assistant Attorney General. The misidentification of the authorizing official is the gravamen of the Chavez decision rather than the issue at bar which it is that of the authority of the authorizing official.

The Court in Chavez rejected the contention that there was an unlawful interception and that the interception order clearly identified Assistant Attorney General Wilson as the person who authorized the application. Since, under 2516(1) Wilson would give such approval and was specifically designated to do so, there was no actionable deficiency in the order. However, it is submitted here that suppression is required when the application and interception order "on their face" identify an individual as an authorizing individual who does not possess the authority to authorize wiretap applications.

If the application recites that it is authorized by an Acting Attorney General, even though it is actually approved and authorized by the Attorney General himself, under 18 U.S.C.2518(10)(a)(ii)suppression must be granted. Secondly, if such application recites that it is authorized by an Acting

Assistant Attorney General, and, in fact, it was approved and authorized by him, then there is no question but that that suppression must be granted.

The government argued in the District Court that the authorizing official was in fact the Attorney General and not the Acting Assistant Attorney General. This was precisely the situation in Acon. It is appellants' view that the authorization clearly involved the Acting Assistant Attorney General. Our view is supported by the authorization itself, the Attorney general's memorandum letter, dated December 15, 1971, and the court order which all specifically and unambiguously indicate that the authorizing official was the Acting Assistant Attorney General, Henry Petersen. (196-206) This was the initial government position when in response to co-appellant Spinelli's motion for discovery it stated that "the government takes the position that the order and underlying application speak for themselves."(747)

The District Court, in its denial of appellants motion to suppress the wiretaps on these grounds, also rejected appellants' attempt to have an evidentiary hearing on the factual issue of who was the "authorizing official". It is submitted here that if this Court finds that Attorney

General Mitchell may have authorized the wiretaps, then the appellants should be entitled to an evidentiary hearing at which time Mitchell himself could be cross-examined. (It is important in this context to note that the former Attorney General has been convicted of conspiring to obstruct justice and perjury.) The inconsistent position taken by the government in the District Court cannot be accepted on its face while appellants, on the one hand can rely on the record herein to support its view that Mitchell never personally authorized the application. In this context, this Court, upon close study of the Petersen affidavit, will note that Petersen does not deny that he was the authorizing official, nor does he categorically state that Mitchell authorized it. He merely deposes that the request was approved in the office of the Attorney General.(209-210)

If the appellants' contention is rejected, the necessity of a hearing is obvious. It is hornbook law that where conflicting affidavits are before a court, unless chargeable negatively against the affiant, as was done in Focarile, a hearing must be held to resolve the conflicts. The trial court may very well, as a matter of proper procedure, compel the description of government procedure in transcribing logs. (See U.S. v. Mirto, 435 F.2d 839.) There is no compelling

reason why the government should not be compelled to make such disclosure here.

Lastly, Mr. Petersen's right to hold the office of Acting Assistant Attorney General expired at the end of thirty days (see 5 U.S.C. 3345-3349.) The Vacancy Act provides that a vacancy in certain departments due to resignation may be filled temporarily for not more than thirty days. This includes the eleven Cabinet departments including the Department of Justice. Thus, Petersen's authority expired thirty days after Wilson's resignation on October 15,1971. By virtue of this, Petersen had no authority to initiate an application after November 15,1976. His actions thereafter must be deemed a nullity.

(B.) The interception application did not provide adequate supporting data specifying why traditional investigative techniques were not sufficient. The statute provides as follows:

> "(1) Each application for an order authorizing or approving the interception of a wire or communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall take the applicant's authority to make such application. Each application shall include the following information:
>
> (c) A full and complete statement as to whether or not other investigative

> procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous". (See 18 U.S.C. 2518.)

It is submitted here that the affidavit by FBI Agent Steinke (211-222) fails to pass constitutional muster in that it does not set forth a sufficient framework of facts to indicate why other methods of investigation appear to be unlikely to succeed. In U.S. v. Kalustian, 529 F.2d 585, the Ninth Circuit reviewed an affidavit remarkably similar to the Steinke affidavit to determine if it satisfied the above requirement. (372-388) The Ninth Circuit held that the affidavit was clearly insufficient. While noting that the utmost scrutiny must be exercised to determine whether wiretap orders conform to the Act, the Court found that the affidavits did not measure up to that constitutional criteria. The Court wrote:

> "The affidavits set forth facts from which probable cause to infer the operation of a gambling could be gleaned. Nearly all of these "facts" trickles into the ears of FBI agents through a series of professional gamblers and bookmakers moonlighting as stoolies for the government. This colorful procedure of shuffling through stacks of hearsay and double hearsay reports from the "underworld" to construct an affidavit prompts some intriguing ethical questions. Unfortunately, as the affidavits attest, none of the government's underworld

journalists are quite willing to testify. Evidence of the telephone numbers used by the bookmaking operation and the identities of some of the conspirators could not successfully support a prosecution without the testimony.

Consequently, the investigating officials decide electronic surveillance was imperative. They discarded alternative means of further investigation because "knowledge and experience" in investigating other gambling cases convinced them that "normal investigative procedures" were unlikely to succeed. Agent Brent recites that searches are often fruitless because gamblers keep no records, destroy them, and maintain them in undecipherable codes. Usually the company's phone records alone are inconclusive.

The affidavit does not enlighten us as to why this gambling case presented any investigative problems which were distinguishable in nature or degree from any other gambling case. In effect the government's position is that all gambling conspiracies are tough to crack, so the government need only show the probability that a legal gambling is afoot to justify electronic surveillance. Title III does not support that view.

> 'Congress legislated in considerable detail in providing for applications and orders authorizing wiretapping and evinced the clear intent to make doubly sure that the statutory authority to be used with restraint and only where the circumstances warrant a surreptitious interception of wired oral communications. These procedures were not to be routinely employed as the initial step in a criminal investigation. Rather, the applicant must state that and the Court must find that normal investigative procedures have

> been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous'". (U.S. v. Giordano, 416, U.S.505,15 Cr.L.3033.) The government's position is further undermined by the activity of other crime-fighting organizations. California, among other states, deprives its policemen of electronic surveillance in all cases. This has not prevented them from successfully prosecuting gambling crimes ... The government failed in this case to satisfy 18 U.S.C. Sec.2518(1)(c). Its application did not adequately show why traditional investigative techniques were not sufficient in this particular case."

It is submitted that a review of the affidavit submitted in Kalustian, if compared to the affidavit submitted by FBI agent Steinke in the case at bar, reflects the similarity of the two affidavits. Thus, for reasons enunciated by the Ninth Circuit in Kalustian it should be held herein that the Steinke affidavit is insufficient.

The purpose of the language in 18 U.S.C.2518 is to assure that wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the "crime". (U.S. v. Kahn, U.S. 94, S.Ct. 977,983, 1974 (footnote 12) The Supreme Court has continually underlined the importance of these requirements:

"These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state and the Court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous ... The Act plainly calls for the prior informed judgment or enforcement officers desiring court approval for intercept authority, and investigative personnel may not themselves ask a judge for authority to wiretap or eaves-drop. The mature judgment of a particular, responsible Department of Justice official is interposed as a critical precondition to any judicial order". (See U.S. v. Giordano, supra, 826-827)

As can be gleaned from the Steinke affidavit, the Department of Justice official herein is merely re-phrasing a conclusion that normal investigative techniques are unlikely to succeed. The Justice Department official and Judge Blumenfeld merely relied upon the representations made to them in the affidavit of the FBI officer. In view of the above cited language, it would appear that the critical independent determination to be made by the Department of Justice official is lacking in the case at bar. (See U.S. v. McCoy, 478 F.2d 176,cert.den.414 U.S.828; U.S. v. Markan,356 F.Supp.472.)

The affidavit does not specifically relate to this case but only to this kind of case. The Giordano Court instructed federal officials that the wiretap technique is

not to be used as the initial step in an investigation. Each gambling case could otherwise fall into the area in which normal investigative techniques would usually fail. The Giordano Court did not envision a situation where federal officials could have blanket and unfettered federal permission to circumvent the normal investigative techniques. It should not be enough that the case is of such a peculiar nature that ordinary investigative techniques might usually fail. Under 2518(1)(c) more than mere reliance upon the type or kind of case is obviously required and specific facts must be detailed with regard to the individuals under suspicion. If it were otherwise, the language of the statute would be superfluous.*

In U. S. v. Steinberg, 525 F.2d 1126, 1130 (Second Circuit, 1975) this Court mandated that the affidavit must contain enough data to permit the authorizing judge reasonably to conclude that other means would be unlikely to succeed. Steinke's affidavit is manifestly lacking in such data.(220-221) Steinke failed to specifically indicate why undercover agents (i.e."telephone books","lay-off men","runners","bettors" etc.) could not be employed. Please note that Steinke's

*The problem here is remarkably similar to that of the "knock and notice" requirements, see U.S. v. Likas, 448,F.2d 607 (Seventh Circuit,1971)in which it was held that the possibility of the destruction of evidence by itself is insufficient to condone the violation of the statute.(18 U.S.C.3109.)

affidavit states that the appellant Nicholas Lanese was so interested in recruiting employees for the upcoming football season, why was it so difficult to employ undercover officers or others in such capacity?

There is little question but that the bettors, runners, lay-off men could easily establish the requirements of the statute including the fact that the gross revenue exceeded two thousand dollars in any single day. There was nothing in the Steinke affidavit to advise Judge Blumenfeld as to why these alternatives were never employed. Since the government's own informants had the requisite information to provide the latter with a conviction, why then could not other undercover individuals be employed in the same capacity for the same purpose? The suggestion made by the government in the District Court that the appellant Lanese would check out his new employees is a lame excuse indeed. In any event, no data was supplied to Judge Blumenfeld to allow him to determine the difficulty, if any, in establishing undercover agents who would be allegedly ultimately screened by the appellant Lanese. The operation in the Steinberg case appeared to be more covert and closed than that in the alleged Lanese operation. Surely, where the appellant Lanese is alleged to be running an operation which is sorely

in need of employees, our distinguished Federal Bureau of Investigation must have the wherewithal to infiltrate such an open operation. In fact, it is submitted here that not only was the data submitted to the authorized judge sufficient to allow him to conclude that the other investigative means will be unlikely to succeed, it is clear that no data of any nature or description was submitted to support that view. (See U.S. v. Hunt,496 F.2d 888, 1974, where the Circuit Court held that the affiant's statements show nothing more than assertions and conclusions of suspected criminal activity. In essence, Steinke's affidavit replete with hearsay, double hearsay, and unsubstantiated conclusions, is nothing more than that which was rejected in Hunt.)

In view of the fact that the affidavit fails to comply with U.S.C.2518(1)(c), the order upon which it is based, and the ensuing contents of the intercepted communications must be suppressed.

POINT II

THE INDICTMENT SHOULD BE DISMISSED SINCE THE APPELLANTS WERE DENIED A SPEEDY TRIAL

On June 8,1973, the District Court granted the government's motion for a Stay of Proceedings, which requested that a stay be granted pending resolution in the Supreme Court of the United States in the matter of U.S. v. Giordano, supra. The appellants joined in the stipulation seeking such a stay. The stay was to be vacated on the filing of that decision. (250) On May 13,1974, the U.S.Supreme Court decided the twin cases of Giordano and Chavez. It is submitted herein that all the appellants have been denied their constitutional right to a speedy trial since the government was not prepared to prosecute any of the appellants until more than six months had elapsed from the date of the arrests (which period includes the tolling time during which the stay was in effect.

Rule 4 of the Plan for Prompt Disposition of Criminal Cases provides that the government must be ready for trial six months "from the date of arrest, service of summons, detention on the filing of a complaint or a formal charge ... whichever is earliest". As noted by Judge Zampano,

appellate review should be confined to the "cold record".(526) That record clearly shows that 273 days expired between the date of the appellants' arrest and the date the government filed its Notice of Readiness.

It is contended herein that the significant dates in computing the time period are as follows:

(a) June 29, 1972: Appellants arrested.

(b) Aug. 15, 1972: Motions filed by appellants.

(c) Oct. 24, 1972: Hearing held on all pending pre-trial motions with decisions reserved thereon.

(d) March 6, 1973: Rulings filed on appellants' pretrial motions.

(e) June 8, 1973: District Court granted government's motion for stay of proceedings.

(f) May 13, 1974: Supreme Court files its decisions in the cases of U.S. v. Giordano and U.S. v. Chavez.

(g) May 28, 1974: The government filed Notice of Readiness.

(h) Oct.18, 1974: Government notifies the court of cases ready to proceed.

In reviewing the above critical dates and in narrowing the scope involving the contested time periods, the following time periods appear to be of no controversy. The period from the day of the arrest, (June 29,1972) to the time that the pretrial motions were filed by the appellants,(August 15, 1972). This involves a period of 47 days. The next additional period to be computed against the government runs from March 6, 1973, (the date when decisions were rendered on the pending pretrial motions), until June 8, 1973, a period of 113 days. This second time period has also been conceded by the government in the District Court. Thus, the undisputed time period at this point equals 158 days.

It will be remembered that the very language of the request for a stay of the proceedings, filed on June 27,1973, indicated that the stay was to expire upon the resolution of Giordano and Chavez. (280) Inasmuch as that decision was filed by May 13, 1974, the time period against the government should run from that time and not from the time the government filed its Notice of Readiness on May 28, 1974.* The letter, dated October 18, 1974, from U.S.Attorney Casey virtually concedes this point.(263) This would mean an additional

*There were no pending motions by these appellants at the time Giordano was filed.

fifteen day period to be computed against the government for a total of 173 days for the appellants.

This is still short of the 180 days requirement of the rules of the Circuit Court. The issue clearly presented is whether or not the time after the government filed its notice of readiness on May 28,1974, should be computed against it. It is our view that the mere filing of such notice does not, in fact, indicate that the government is indeed ready to proceed to trial. Unfortunately, the court below did not make a specific finding as to whether or not it received any indication prior to October 18,1974, from the government that it was, in fact, ready for trial. Under Rule 4 of the Second Circuit Rules, the government must communicate its readiness for trial to the court in some manner within a six month period. (U.S. v. Pierro,478 F.2d 386, 389.) If the court did not receive any indication, then the government did not satisfy its burden under Rule 4, and the additional period must be computed against the government commencing from May 13,1974. In fact, the letter to the court, dated October 18,1974, does not really indicate that the case is ready to proceed. No reference was made in Mr.Casey's letter that the notice of readiness has in fact been filed. There is no request that

the matter be set down for trial, but merely that a conference be scheduled to resolve any questions. (263)

It is obvious that the government was not ready to proceed to trial when the notice was filed, since subsequent thereto it filed a motion for voice exemplars.(489) Since the government felt that vocce exemplars were necessary for its case, then in fact it could not be ready for trial on May 28, 1974. The appellants asked the District Court to make a finding as to whether the voice exemplars were critical to the government's case in the court below.* The District Court denied the request despite the filing of the statement. The issue of whether or not the government was in fact ready for trial was presented to this Court in U.S. v. Pollak, 474 F.2d 828 and U.S. v. Strayhorn,471 F.2d 661, 667; U.S. v. Gonzalez,389 F.Supp.471,475, E.D. N.Y.,1975. In Pollak, this Court remanded the matter to the District Court for further findings on the issue whether or not the government had complied with the discovery order and was, in fact, ready for trial. If the government was not in fact ready for trial on May 28,1974, then Rule 4 has been clearly violated, and the indictments must be dismissed with prejudice. (U.S. v.

*Before a voice exemplar is ordered the government must make a "minimum showing" that the exemplar sought is relevant and necessary to the criminal proceedings.(see In Re Grand Jury Proceedings 486 F.2d 85;567 F.2d 963 (3rd Cir.)

Scaffo, 480 F.2d 1312, 1318 (2nd Cir.,1973); Hilbert v. Dooling, 476 F.2d 355,358 (2nd Cir.1973) cert.den. 414 U.S.878.)

The government is deemed ready "as long as discovery is completed within the six month period." (U.S.v.Strayhorn, supra,667) Thus, if the government files motions for Discovery and Inspection, that not only further indicates lack of readiness for trial, but also is certainly not a viable basis for contending, as it did below, that the period from the date of its filing should be excluded under Rule 5(a) of the Plan. This delay is totally within the government's control and must logically be charged to it.

Accordingly, since it is manifest that the government has not even really shown it was ready to proceed and, in view of the strictness of the Rule, the indictments must all be dismissed with prejudice. (See U.S. v. McDonough, 504 F.2d 67 (2nd Cir.,1974).

POINT III

THE SEARCH AND SEIZURE OF ITEMS LISTED IN THE INVENTORY AND RETURN SHOULD BE SUPPRESSED UNDER RULE 41(f) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE AND THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

All of the items seized in the inventory should have been suppressed and the District Court erred when it denied appellants' motion to do so.

(A) Firstly, it is submitted herein that the command of the search warrant failed to satisfy the requirements of particularity with regard to the items to be seized as dictated by the Fourth Amendment and Rule 41(c) of the Federal Rules of Criminal Procedure. It has long been established that general searches are deemed to violate the fundamental rights enunciated under the Fourth Amendment of the United States Constitution. (see Marron v. U.S., 275 U.S. 192). More recently the Supreme Court has stated:

> "The Fourth Amendment's requirement that a warrant particularly describe the place to be searched, and the persons or things to be seized, repudiated these general warrants and makes general searches... impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." (Berger v. New York, 388 U.S. 41,58), 87 SCt. 1873, 1883; See also Stanford v. Texas, 379, U.S. 476, 48); U.S. exrel Michens v. LaVallee, 391 F.2d 123, 126-127

(2nd Circuit); People v. Baker, 23 N.Y.2d, 307, 319, 296 N.Y.S.2d 745).

The purpose of that stricture is to prevent "a mere roving commission". (U.S. v. Quantity of Extracts, Bottles, etc., 54 F.2d 643, 644). This Court held in U.S. v. Marti, 421 F. 2d 1263, that a portion of a search warrant which ordered the seizure of any "paraphernalia" which could be used to violate Section 54-197 of the Connecticut General Statutes is a general warrant which should not be tolerated. In the case at bar, the language employed in the warrant was directed to "gambling records" and "wagering paraphernalia" which must surely fail to satisfy the constitutional requirement of specificity. In fact, the language of the warrant indicates that the search was not limited to these two items. More particularly, such language allows the final discretion to rest with the executing officers. Such command violates the unambiguous language of the above cited cases and usurps the final authority of the magistrate as to what should be seized and under what circumstances.

We recognize that this is not an unqualified rule and that in certain cicumstances the precision normally required may be absent. However, that exception is not relevant to the case at bar. This Court will note that only

where the circumstances make an exact description of the items to be seized a virtual impossibility does the Court condone such a general search. In such a situation the officer conducting the search can only be expected to describe the generic class of items he is seeking. (See U.S. v. Robinson, 287, F. Sup. 245, 254-255; U.S.v. One 1965 Buick, 392 F.2d 672, 269-280 (6th Circuit); U.S. v. Russo, 250 F. Sup.55,57; U.S. v. Sharfman, 448 F.2d 1352; (2nd Circuit)). The test was stated in U.S. v. Melville, 309 F.Sup. 829, 832 (S.D.N.Y. 1971) where the Court noted that it should consider whether the items were sufficiently described so that the officers' judgment in respect to the items seized may not be said to 'have been arbitrary.' In the case at bar, the officers conducting the investigation and seeking the authority to seize evidence had an opportunity to know precisely what items would be present on the premises. This information was received as a result of the wiretaps. Since they were in possession of this information it is certainly not unreasonable to expect that the items to be ultimately seized be specifically stated. There was no necessity for a general grant of authority. Consequently, the exception to the Marron Rule is not present in the case before this Court, and ultimately, the command of a warrant left to

the executing officers the ultimate discretion as to what items to seize.

(3) Secondly, it is our view that the Court below erred in failing to closely examine the Steinke affidavit which is both inconsistent and misleading. At some intervals, Agent Steinke has identified with certainty parties to conversations, yet, at other times, he has indicated in his affidavit that he cannot identify those individuals. Furthermore, during the course of numerous pretrial motions the government itself requested voice examples to aid it in identifying those very same voices. (254,480) Since Steinke himself was not sure of the identity of those voices, how then could the issuing magistrate conclude that those same individuals named in the affidavit were the parties to those conversations? It is obvious then that the magistrate merely accepted the Steinke representation since the statements by Steinke are patently inconsistent. It is that very type of falsehood which has been condemned as defective by other courts. (See U.S. v. Culotta, 413 F.2d 1343, 1345 (2nd Circuit, 1965), cert. denied 396 U. S. 1019; U.S. v. Dunnings, 425 F.2d 836, 838-840 (2nd Circuit, 1969) cert. denied 397 U.S. 1002).

Steinke's affidavit is patently misleading and

inconsistent at the following points:

1) The identities of appellants Baloq and Nicholas Lanese appear established by virtue of a telephone conversation on December 17, 1-71 at 2:34 p.m. (796). However, an examination of the transcript of this same conversation indicates the parties listed as "Bill" and "UM" (probably "unidentified male"). The basis for Steinke's conclusion that the unidentified make was Lanese is lacking.

2) The alleged conversation of December 17, 1971 at 7:52 p.m. leads to other unanswered questions. The affidavit indicates the conversation was between Baloq and Nicholas Lanese (797) yet, the transcript specifies a conversation between Baloq and "UM". No basis for this conclusion is presented.

3) The affidavit relates to a conversation between Baloq and Nicholas Lanese in which Richard Lanese's name is mentioned. (797) The transcript of the conversation reveals that no reference whatsoever was made to Richard Lanese.

If the affiant intentionally makes false statements to mislead a judicial officer on an application for a search warrant, the warrant is invalid whether or not the statements are material to establishing probable cause. If the affidavit

contains false statements not intentionally made to mislead but material to the establishment of probable cause, they must be excised. (U.S. v. Hunt, 496 F.2d 388, 1974). In order to establish which of the above categories Steinke's mis-information falls, a hearing should have been held. (See also U.S. v. Thomas, 489 F.2d 664, 5th Circuit, 1973; U.S. v. One 1973 Lincoln Continental Mark IV, 391 F. Sup.1197).

(C) The affidavit is also insufficient since the reliability of the informant has not been established. Steinke, a veteran of fifteen (15) months with the Bureau, alleges that the informant has been responsible for more than two hundred tips. However, reliability of this informant must certainly be in question when the alleged two hundred tips have led to no more than two arrest warrants with no convictions having subsequently been obtained. (213-214) In fact, the large number of tips with such little result establish beyond peradventure that this particular informant is unreliable. Consequently, under the authority of Aguilar v. Texas, Supra, and other cases, the affidavit is insufficient. (See U.S. exrel Hurley v. State of Del., 365 F. Sup.282; Hoop v. Warden, 531 F2d 1167, (2nd Circuit)).

(D) Lastly, if the wiretaps constitute illegal

searches and seizures as previously submitted, then the "fruits" of those interceptions taint the affidavit of Agent Steinke in support of the search warrants. (See Wong Sun v. U.S., 371 U.S. 471.)

CONCLUSIONS

The District Court erred when it held, without a fact finding hearing, that the application for electronic surveillance and the authorization therefor was given by one who is empowered to do so. Furthermore, the affidavit in support of the application for said interception order did not adequately set forth facts to indicate why alternative investigative methods could not be employed. The appellants were denied their constitutional right to a speedy trial since the Government was never ready to go to trial despite its filing a Notice of Readiness 173 days after the arrest of the appellants as interpreted under the Rule 5. At the very least, the District Court erred in failing to make findings of fact after a hearing as to whether or not the Government was ready to proceed. The filing of the Notice to compel further voice exemplars by the Government is ample proof that it was not, in fact, prepared to proceed to trial at the time it filed its Notice. Lastly, the District Court erred in failing to suppress the items of personal property seized from the persons and/or premises occupied by the appellants.

Wherefore, the judgment of conviction of all the appellants should be reversed and the indictments dismissed, or in the alternative, the matter should be remanded to the District Court for hearings on certain issues of fact which were not properly resolved in the Court below.

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 3 day of Jan., 1977 ~~1976~~ deponent served the within Brief upon

Hon. Peter Daucey

attorney(s) for

Appellee

in this action, at

270 Orange St., Room 310
P.O. Box 1824
New Haven, Connecticut

the address(es) designated by said attorney(s) for that purpose by depositing _____ copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this 3 day of Jan., 1977 , ~~1976~~.

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978

CASE TITLE: U.S.A. v. William R. Balog, et al.

BS

DOCKET NO. ▶ 76-1504

MR NUMBER ▶

▶ NICHOLAS LANESE

TYPE OF CASE: [ ] U.S. Civil [ ] Bankruptcy [X] Criminal; [ ] Original proc. [ ] Administrative [ ] Private Civil [ ] Prisoner

DISTRICT COURT: [X] Conn. [ ] EDNY [ ] WDNY [ ] NDNY [ ] SDNY [ ] VT [ ] Other (specify)

▶ Forms	Date Filed	DOCKET FEE	DISTRICT COURT DATA:	[ ] CROSS APPEAL OR [X] CONSOLIDATED WITH DOCKET NOS:
A	11-4-76	DATE 11-5-76	DISTRICT DOCKET NO. H-298-H-299	▶ 76-1521, 76-1505
B		ACCOUNT OF APPELLANT	DATE ACTION FILED IN DIST. COURT 6-27-72	▶ 76-1522, 76-1555
C				▶ see 76-1505
D		RECEIVED $50.00	DATE OF DISTRICT COURT JUDGMENT 10-14-76	RECORD FILED (ORIGINAL DIST. COURT PAPERS): 11-10-76
CJA 20				
CJA 23		DISBURSED	DATE N.A. FILED 10-26-76	(TRANSCRIPT(S)): 12-9-76
Other (specify)				
DATE(S) PREARGUMENT CONFERENCE(S) HELD:		NO FEE REQUIRED: [ ] FP [ ] 24a [ ] SC	DATE DOCKETED 11-5-76	

SCHEDULING ORDERS

	SO 1	Adj SO 2	Adj SO 3	Adj SO 4	Adj SO 5
	DATE ISSUED	DATE ISSUED	DATE ISSUED	DATE ISSUED	DATE ISSUED
	12-2-76				
Record					
Transcript	12-30-76				
BRIEFS:					
Appellant	1-3-77				
No.	10				
Appellee	2-2-77				
No.	10				
Argument (Week of)	2-21-77				

[ ] ADJ. SO, 6 ETC. OVER [ ] APPELLEE'S APPENDIX

FILING OF BRIEF, APPENDIX, ETC.

PAPER FILED	PARTY	DATE
B(10) Balog, et al.	T	1-3-77
B(10) Spinelli, et al.	T	1-3-77
JA(10) Vols. I-II	T(s)	1-3-77
B(6pp)	E	2-3-77
B(10)	E	2-4-77
Pet for Reh. (25)	T	2-28-77

MOTIONS TO EXTEND TIME

Date Filed	Order Entered
1	
2	
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10	

[ ] Proceedings Held in Abeyance [ ] Reactivated

[ ] Issuance of Mandate Stayed [ ] Stay Vacated

▶ CALENDAR

Date Time Request Sent: 12-2-76

Date Disqualification Sent: 12-8-76

Date Certain Notices Sent (No. sent) 1 2 3 4(5) 6 1 18

Receipt of Day Certain Notices [ ] 1 2 3 (4) 5 6

Date Set for Argument: 2-22-77

[X] Committed [ ] Not Committed [ ] ROR [ ] Bail

▶ TERMINATION

Date Heard/~~Submitted~~: 2-22-77 Tape No.: 48B, 49A

Date Judgment Filed/~~XXXXXXXXXXXXXXXX~~: 2-22-77 Date Mandate Issued: 2-24-77

Date Bill of Costs Filed:

Date Statement of Costs Filed:

Petition for Rehearing Filed Date 2-28-77 Granted [ ] Denied [X] Date 3-22-77

[ ] Additional Petitions for Rehearing-See Docket Entries

Petition for Certiorari Filed Date Granted [ ] Denied [ ] Date

[ ] Additional Petitions for Certiorari-See Docket Entries

▶ METHOD OF DISPOSITION

[ ] WRITTEN OPINION (BY JUDGE)
[X] WRITTEN OPINION (PER CURIAM)
[ ] DECISION FROM THE BENCH
[ ] SUMMARY ORDER
[ ] COURT ORDER W/O OPINION
[ ] DEFAULT DISMISSAL (CAMP, CAEP, OTHER)
[ ] CONSENT DISMISSAL (RULE 33, CRIMINAL, OTHER)
[ ] 0.18(7) DISMISSAL
[ ] OTHER (SPECIFY)

Record Returned: 2-28-77

Receipt of Return of Records: 3-9-77

Date Reopened: